SUPREME COURT OF THE UNITED STATES

October Term, 1982
No.

ROBERT J. KONDRAT
Petitioner

vs.

CITY OF WILLOUGHBY HILLS
Respondent

APPENDIX

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A1

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

DEC

ROBERT J. KONDRAT
29121 Chardon Road
Willoughby Hills, OH 44092
Plaintiff

-VS-

CITY OF WILLOUGHBY HILLS
35405 Chardon Road
Willoughby Hills, OH 44094
Defendant

CASE NO. 80CV01263

Judge

COMPLAINT

JURY TRIAL DEMANDED

Now comes Plaintiff and, for his Complaint, alleges as follows:

1) That the Mayor, Councilmen and Law Director of the City of Willoughby Hills are elected and/or appointed officials responsible for the lawful administration of city government.

2) Plaintiff alleges that City of Willoughby Hills officials have not administered government in a lawful manner. Plaintiff alleges that the City of Willoughby Hills officials have repeatedly refused to enforce Chapter 1337.02 (see Exhibit "A") of the Willoughby Hills Codified Ordinance, although the officials have been called upon time and time again to enforce its codes and ordinances.

3) As a result of the City of Willoughby Hills officials not administering government in a lawful manner, the Plaintiff was damaged and is continuing to be damaged. In 1977 the valuation of Plaintiff's property, and other properties in the neighborhood, was devalued by the Lake County Treasurer's office. This devaluation resulted from the creation of a junk yard on residentially zoned property in violation of the codified ordinance and the officials refusal to act.

4) Plaintiff demands damages in the sum of Thirty Thousand ($30,000) Dollars, reasonable attorney's fees in connection with this lawsuit and all costs together with interest thereon from the date of judgment at maximum amount allowable by law.

Robert J. Kondrat

SERVICE

A copy of the foregoing COMPLAINT was mailed by Certified U.S. mail, postage prepaid, to Mayor Melvin Schaefer, 35405 Chardon Road, Willoughby Hills, OH 44094, on this 24th day of November, 1980.

Robert J. Kondrat

Exhibit

CHAPTER 1337
Unsafe Structures

1337.01 Unsafe structures defined; declared a nuisance; abatement.
1337.02 Exterior property nuisances defined; abatement.
1337.03 Inspection; notice of defects to owner.
1337.04 Service of notice; posting.
1337.05 Failure to comply.
1337.06 Emergency action.
1337.07 Costs incurred; recovery.

CROSS REFERENCE
Abatement and cost recovery - see Ohio R. C. 715.26(B), 715.261

1337.01 UNSAFE STRUCTURES DEFINED; DECLARED A NUISANCE; ABATEMENT.
All buildings or structures, including one family and two family dwellings, which are structurally unsafe, unsanitary, or not provided with adequate safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life or which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment are, for the purpose of this chapter, declared to be unsafe structures. All such unsafe structures are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified in this chapter.
(Ord. 1967-30. Passed 7-13-67.)

1337.02 EXTERIOR PROPERTY NUISANCES DEFINED; ABATEMENT.
No owner of any premises shall maintain or permit to be maintained at or on the exterior property areas of such premises any condition which deteriorates or debases the appearance of the neighborhood; or reduces property values in the neighborhood; or adversely alters the appearance and general character of the neighborhood; or creates a fire, safety or health hazard; or which is a public nuisance; including but not limited to the following:

(a) Broken or dilapidated fences, walls or other structures.
(b) Out of use or nonusable appliances, dilapidated automobiles or automobile parts.
(c) Rugs, rags or other materials hung on lines or in other places on such premises, which materials are not being used for general household or housekeeping purposes; broken, dilapidated or unusable furniture, mattresses or other household furnishings; plastic materials, paints, miscellaneous coverings and/or any other materials including those described in this section, placed at or on the premises in such a manner as to be patently unsightly, grotesque or offensive to the senses.

All such conditions are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified in this chapter. (Ord. 1967-30. Passed 7-13-67.)

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

13 Cm

ROBERT J. KONDRAT Plaintiff -vs- CITY OF WILLOUGHBY HILLS Defendant	CASE NO. 80 CIV 1263 JUDGE RICHARD B. McQUADE, JR. REPLY BRIEF AND EVIDENCE - MOTION FOR SUMMARY JUDGMENT

JAN

In accordance with the court's letter of December 24, 1981, this reply is submitted for the court's consideration.

Attached hereto as EXHIBIT "A" is property tax billing invoiced for first half tax year of 1976, submitted by Mable P. Johnson, Treasurer of Lake County, on Plaintiff's property. The top bill shows a valuation of $13860.00 The bottom bill, the one that was paid, shows a valuation of $9810.00. This shows a total devaluation of $4050.00 as a result of the alleged judgment.

The court's letter of December 24, 1981 states that the motions appear to raise questions of law only. There is no law involved here. Only common sense is involved. Figures don't lie.

The court is asked to grant Plaintiff immediate Summary Judgment for the relief as stated in the Complaint.

Respectfully Submitted,

Robert J. Kondrat

SERVICE

A copy of the foregoing was mailed this 4th day of January, 1982, to the United States Attorney General, The Department of Justice, Washington, D.C. 20530; and to Barry M. Byron, Byron & Cantor, Suite 330, 36100 Euclid Avenue, Willoughby, OH 44094, by certified and regular U.S. mail respectively, postage prepaid.

Robert J. Kondrat

cc: News Media
Bar Associations

KONDRAT ROBERT J
4 TRACT
1 LOT
EUCLID-CHARDON RD ALOT
FT 0.00AC 2.38

COLLECTION CLOSES FEB 15, 1977 KONDRAT ROBERT J
PARCEL NO 31A-008E-00-019 29121 CHARDON RD
MAP SYMBOL WICKLIFFE OH 44092

30138 27124 28904
39986 1780
9848 3014 28904

MABLE P. JOHNSON
KONDRAT ROBERT J
4 TRAC
1 LO
EUCLID-CHARDON RD ALO
FT 0.00AC 2.38

DETACH TREASURER'S RECEIPT
31A-008E-00-019
4,260
9,600
13,860
WILLOUGHBY HILLS CTY
27124 28904
1780
28904

EXHIBIT "A"

A5

IN THE COURT OF COMMON PLEAS OF LAKE COUNTY, OHIO

Robert J. Kondrat Plaintiff, vs. City of Willoughby Hills, Defendant.	)	Case No. 80-CIV-1263 DECISION JAN 21 1982

This case is before the Court upon the motions for summary judgment of both parties.

Addressing first the defendant's motion, it is contended that the complaint fails to state facts upon which relief can be granted. The plaintiff alleges that the City of Willoughby Hills officials have unlawfully refused to enforce Chapter 1337.02 of the Willoughby Hills Codified Ordinance by permitting the operation of a junk yard on residentially zoned property, and that as a result, plaintiff's property has been devalued.

The enforcement of the ordinance is a governmental, as opposed to a proprietary function. Wooster v. Arbenz, 116 Ohio St. 281, 284-5 (1927); Cutnau v. Columbus, 77 O.L.A. 596, 598 (1958). Except as otherwise provided by statute, municipal corporations are immune from liability in the performance of their governmental functions. Brought v. Cleveland, 167 Ohio St. 29 (1957); Haas v. Hayslip, 51 Ohio St. 2d 135, 136 (1977). See City of Mansfield v. Bristor, 76 Ohio St. 270, syllabus 3 (1907) wherein it is held:

> The power given to a municipality to prevent injury or annoyance from anything offensive or unwholesome, and to cause any nuisance to be abated, is governmental, and the municipality is not liable for damages from a private nuisance resulting from its ommission to exercise the power by the adoption of resolutions or ordinances, or for damages from such nuisance occasioned by a failure of its officers to enforce resolutions or ordinances adopted in the exercise of that power.

Also see Western College v. Cleveland, 12 Ohio St. 375 (1861).

In Oregon v. Ferguson, 57 Ohio App. 2d 95, (1978) the Franklin County Court of Appeals dealt with an action for the failure of state examiners to detect unlawful shortages in the accounting of a city clerk-auditor. In holding that the complaint stated no claim for relief the court reasoned that:

> Statutes requiring state agencies to inspect and enforce safety standards were enacted to protect the public generally against unsafe conditions. They were not intended . . . to create a duty toward any particular person. Likewise their performance or nonperformance cannot be the basis of a tort action by an injured person.

Id. at 101. The court also stated that if the legislature intended to abolish governmental immunity in this respect, they could have clearly and unequivocally indicated this intent in the actual language used. Id. at 102. In interpreting a statute or ordinance it is to be presumed that the legislature used the language advisedly, intelligently, and expressed its intent by use of the words contained in the ordinance. Cleveland Trust Co. v. Eaton, 21 Ohio St. 2d 129 (1970); Financial Indemnity Co. v. Cargile, 32 Ohio Misc. 103 (1972); 50 O. Jur. §173 at 147 (1961).

In further support of their motion for summary judgment, the defendant contends that there have been no damages suffered by the plaintiff. Defendants have attached the affidavit of Melvin G. Schaefer Mayor of Willoughby Hills and defendant in this matter stating that he is personally familiar with the premises owned and occupied by the plaintiff, and that there is no actionable violation of Section 1337.02 of the Willoughby Hills Code existing near or in the neighborhood of the plaintiff's property. Furthermore, he has attached the Lake County Real Estate Tax records for plaintiff's property which indicate that the plaintiff's property has increased in the period from 1976 to the date of filing this action.

By way of reply brief and motion for summary judgment, plaintiff has attached tax billing invoices for the year 1976. Plaintiff did not attach tax bills for the years 1977, 1978, and 1979. Beyond this the plaintiff has made no legal arguments. When a motion for summary judgment is made, an adverse party may not rest upon the mere allegations of his pleadings, but his response, by affidavit or otherwise, mus

set forth that there is a genuine issue for trial. 56(E) Ohio R. Civ. P.

It appears from the evidence that reasonable minds can come to but one conclusion and that conclusion is adverse to the plaintiffs. Accordingly, the defendants' Motion for Summary Judgment is found well taken and is hereby granted, plaintiff's motion is hereby denied. Defendant to journalize.

Richard B. McQuade, Jr.
Judge by Assignment

cc: Mr. Robert J. Kondrat
Mr. Barry M. Byron, Esquire

A8 FILED

1/22/82jj

JAN 27 1 54 PM '82

ANDY J. TUSH
LAKE CO. CLERK OF COURT

V.S. 1-31-82

JAN 28

IN THE COURT OF COMMON PLEAS

LAKE COUNTY, OHIO

ROBERT J. KONDRAT Plaintiff -vs- CITY OF WILLOUGHBY HILLS Defendant	CASE NO. 80-CIV-1263 JUDGE RICHARD B. McQUADE, JR. JUDGMENT ENTRY

This cause came on to be heard on the Motions for Summary Judgment of both Plaintiff and Defendant.

Upon consideration, the Court finds that the Motion of the Plaintiff for Summary Judgment is not supported by law or evidence, and therefore, said Motion is not well taken.

Upon consideration of the Defendant's Motion for Summary Judgment, the pleadings, the Affidavit and Brief in Support of said Motion and Plaintiff's arguments opposing said Motion, the Court finds that reasonable minds can come to but one conclusion and that conclusion is adverse to the Plaintiff.

The Court further finds that the Defendant City of Willoughby Hills is entitled to judgment as a matter of law. All findings contained herein are based upon the Decision previously announced in this matter which Decision is hereby incorporated by reference into this Judgment Entry as if fully rewritten herein.

The Court further finds, therefore, that the Defendant is entitled to summary judgment dismissing the Complaint of Plaintiff with prejudice.

LAW OFFICES OF
VRON AND CANTOR
SUITE 200
0100 EUCLID AVENUE

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Complaint in this matter be and the same hereby is ordered dismissed with prejudice at Plaintiff's cost.

IT IS SO ORDERED.

Exceptions are noted for Plaintiff.

JUDGE RICHARD B. McQUADE, SR.

APPROVED:

Barry M. Byron
Attorney for Defendant

LAW OFFICES OF
BYRON AND CANTOR
SUITE 500
6500 OUELIO AVENUE
WILLOUGHBY, OHIO 44094

FILED
COURT OF APPEALS
AUG 30 1982
ANDY J. TOTIN
CLERK OF COURT
LAKE COUNTY, OHIO

STATE OF OHIO)
)
LAKE COUNTY) SS:

IN THE COURT OF APPEALS OF OHIO

SEVENTH DISTRICT

ROBERT J. KONDRAT,)
PLAINTIFF-APPELLANT,) JOURNAL ENTRY
- VS -) CASE NO. CA 9-069
CITY OF WILLOUGHBY HILLS,)
DEFENDANT-APPELLEE.)

AUG 1982

For the reasons stated in the opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this court that the judgment of the Common Pleas Court of Lake County, Ohio, is affirmed. Costs to be taxed against plaintiff-appellant.

Joseph E. Ford, P.J.
JUDGE.

FILED
COURT OF APPEALS
AUG 30 1982
ANDY J. TOTIN
CLERK OF COURT
LAKE COUNTY, OHIO

STATE OF OHIO, LAKE COUNTY

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

ROBERT J. KONDRAT,	)	
PLAINTIFF-APPELLANT,	)	OPINION
- VS -	)	CASE NO. CA 9-069
CITY OF WILLOUGHBY HILLS,	)	
DEFENDANT-APPELLEE.	)	

APPEARANCES.

Robert J. Kondrat, 29121 Chardon Road, Willoughby Hills, Ohio 44092

Barry M. Byron, Willoughby, Ohio, for Defendant-Appellee.

Hon. Joseph E. O'Neill,
Hon. Joseph Donofrio, JJ.,
of the 7th Appellate District, and
Hon. William H. Victor, J.,
of the 9th Appellate District,
sitting by assignment in the
11th Appellate District.

Dated:

O'NEILL, J.

On December 1, 1980, the appellant filed a complaint in the trial court naming the City of Willoughby Hills as the defendant. The complaint alleged that officials of the City had refused to enforce a chapter of the City ordinances resulting in damage to the plaintiff. The complaint prayed for damages in the sum of $30,000.00.

The City answered by way of denial of wrongdoing; failure to state a claim and failure to commence the action within the time provided by law.

Apparently in the process of assignment, this case was assigned to Judge John Parks. On August 7, 1981, Judge Parks referred the file to the Administrative Judge for reassignment, who assigned it to Judge Jackson. On August 14, 1981, Judge Jackson referred the case for assignment to a visiting judge. On September 3, 1981, Judge Mitrovich, the Administrative Judge, assigned the case to visiting Judge Richard McQuade of Fulton County.

On December 22, 1981, the defendant filed a motion for summary judgment with an affidavit attached. The motion argued that municipalities are immune from liability in the performance of governmental functions. The motion also argued that plaintiff had suffered no damages.

On January 5, 1982, the plaintiff moved for summary judgment.

The court dismissed the complaint. In support of dismissal, the court relied upon the case of The City of

Mansfield v. Bristor (1907), 76 Ohio St. 270, the third syllabus of which reads as follows:

> "3. The power given to a municipality to prevent injury or annoyance from anything offensive or unwholesome, and to cause any nuisance to be abated, is governmental, and the municipality is not liable for damages from a private nuisance resulting from its omission to exercise the power by the adoption of resolutions or ordinances, or for damages from such nuisance occasioned by a failure of its officers to enforce resolutions or ordinances adopted in the exercise of that power."

Our research has led us to the conclusion that this is the abiding law and was legal authority for dismissal.

The plaintiff timely filed a notice of appeal and assignments of error and brief. In his brief, he does not argue the legal authority for dismissal as set forth in Mansfield v. Bristor. Instead, he argues that Judge Mitrovich, the Administrative Judge, was biased and should have had no involvement in the case. Upon the record, the only involvement of Judge Mitrovich was the assignment of Judge McQuade, the trial judge. We do not find that such activity, in any way, had anything of a prejudicial effect on the outcome of the case. The appearance of justice was not factually besmirched by Judge Mitrovich nor Judge McQuade. We can only conclude, from the record, that this argument is unsupported and borders upon the frivolous.

Judgment affirmed.

Donofrio, J., concurs,
of the 7th Appellate District,

Victor, J., concurs,
of the 9th Appellate District,

sitting by assignment in the
11th Appellate District.

APPROVED:

PRESIDING JUDGE, of the 7th Appellate District, sitting by assignment in the 11th Appellate District.

80-121 Baggett Brothers, Publishers, Springfield, Ohio

THE SUPREME COURT OF OHIO

NOV

THE STATE OF OHIO,
City of Columbus.

*19*82 *TERM*

To wit: November 17, 1982

Robert J. Kondrat,
Appellant,

vs.

City of Willoughby Hills,
Appellee.

No. 82-1415

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS

for SUMMIT *County*

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

FOR YOUR
INFORMATION
ONLY
NOT FOR FILING

W. Brown, J., not participating

COSTS:

Motion Fee, $20.00, paid by Robert J. Kondrat

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this .....*day of* ..... *19*.....

.....*Clerk*

.....*Deputy*

THE SUPREME COURT OF OHIO

NOV 15

THE STATE OF OHIO, City of Columbus. } 19 82 TERM

To wit: November 17, 1982

Robert J. Kondrat,

Appellant,

vs.

City of Willoughby Hills,

Appellee.

No. 82-1415

APPEAL FROM THE COURT OF APPEALS

for SUMMIT County

This cause, here on appeal as of right from the Court of Appeals for SUMMIT County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

W. Brown, J., not participating

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for SUMMIT County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court

this ..... day of ..... 19 .....

..... Clerk

..... Deputy